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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

THE ESTATE OF ANGEL)	CASE NO. 13-CV-2240-GPC-MDD
LOPEZ, by its successor in interest)		
Lydia Lopez; LYDIA LOPEZ, in)		PLAINTIFFS' BRIEF ON
her own right; and ANGEL LOPEZ)		FACTUAL SUBMISSIONS RE:
JR. AND HECTOR LOPEZ, by)		QUALIFIED IMMUNITY
and through their guardian <i>ad litem</i> ,)		
LYDIA LOPEZ,)	Date: August 14, 2017
Plaintiffs,)	Time: 1:30 .pm.
v.)	Court Room: 2D
)	
CITY OF SAN DIEGO, and)		Judge: Hon. Gonzalo P. Curiel
KRISTOPHER WALB,)	Trial: August 23, 2017
)	
Defendants.)	
)	

1 There is no need for detailed questions of specific factual findings to be
2 submitted to the jury in this case in order for the Court to rule on any issue of
3 qualified immunity. The jury's finding of liability for excessive force after
4 receiving proper instructions on the legal standard applicable to excessive force is
5 all that the law requires. This case is not the unusual case in which qualified
6 immunity will turn on the resolution of a specific and discrete factual issue.
7 Rather, the determination under the totality of circumstances by a properly
8 instructed jury will dispose of the qualified immunity issue. In *Tortu v. Las Vegas*
9 *Metro Police Department* 556 F.3d 1075 (9th Cir 2009), the Court suggested that
10 since qualified immunity is an issue of law, it should be raised by way of motions
11 under 50(a) and 50 (b) of the Federal Rules of Civil Procedure. 556 F.3d at 1083.
12 See also *A.D. v. State of California Highway Patrol* 712 F.3d 446 (9th Cir 2013).

13 Submission of discrete specific factual inquiries on the verdict form invites
14 error. First, because the legal standard is based on the totality of facts, tens or
15 scores of specific factual issues could be propounded. Second, any limitation to a
16 discrete issue runs the risk of focusing jury attention on a single issue as opposed
17 to the totality, and would effectually steer the jury's deliberation by emphasizing
18 certain facts and issues to the exclusion of others. Third, this case is not one of the
19 unusual cases in which a specific finding of fact will be determinate on the legal
20 issue of qualified immunity. This case involves the application of well known,
21 well established principles a standard form of case: excessive force.

22 The jury's only role is to determine whether a constitutional right has been
23 violated; whether the right was clearly established is an issue of law for the court.
24 *Ruff v. County of Kings* 2009 U.S. Dist. LEXIS 110638 (E.D.CA 2009). Here, if
25 the jury finds that based on the totality of the circumstances Walb used excessive
26 force, the decision of whether the law was clearly established is solely for the
27 court.

1 The defendants' proposed verdict form on this issue illustrates the problems
2 caused by submission of such multiple questions. Defendants have focused on
3 factual issues in a peculiarly argumentative, one-sided fashion. Plaintiffs
4 submission of such multiple and argumentative questions will result in a byzantine,
5 lengthy verdict form which will confuse rather than enlighten.

6
7 Dated: August 11, 2017

Respectfully submitted,

8 IREDALE AND YOO, APC

9 s/ Eugene Iredale

10 EUGENE IREDALE

11 JULIA YOO

12 GRACE JUN

13 *Attorneys for Plaintiffs*